

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7082 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMANBHAI SHANABHAI PATEL

Versus

NADIAD TALUKA PANCHAYAT

Appearance:

MR SURESH M TRIVEDI for Petitioner

MR DF AMIN for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 26/09/97

ORAL JUDGEMENT

The petitioner challenges the order dated 23rd September, 1997 at Annexure "F" to the petition, of the State Government, rejecting the Revision Application of the petitioner, which was filed under the provisions of Section 259 of the Gujarat Panchayats Act, 1993, against the resolution of the respondent No.1 Panchayat dated

27th August, 1997, passing the motion of no confidence against the petitioner, who was the President of the said Taluka Panchayat.

2. It is contended on behalf of the petitioner that the notice of motion for his removal was not given in the prescribed form "A" and since it contravened the provisions of Rule 20 of the Gujarat Panchayats (Procedure) Rules, 1997, the resolution passing no confidence motion against the petitioner, was invalid.

Under Rule 20 of the said Rules, it is provided that any member of a Panchayat who desires to move a no confidence motion against the President, shall give notice thereof to the Secretary in Form-A. A copy of the notice which is at Annexure "A" clearly shows that it was given in Form-A. All the requirements of Form-A which is prescribed under the said Rules, are complied with and the notice contains all the particulars which are required to be given as per the prescribed form. There is therefore, no substance in the contention that the notice of no confidence motion was not issued in accordance with Rule 20 of the said Rules.

3. It was next contended that in the said notice, reasons were not specifically stated and that it was vague. It was also contended that it was bad on the ground that the date on which it was prepared, was not mentioned.

It will be noticed from the said notice of no confidence motion that the reasons for moving the no confidence motion are clearly stated. These are - (i) that the petitioner was carrying on the administration arbitrarily; (ii) that there was boundless corruption in the development works, and, (iii) that the Government vehicles were being misused for private purposes. It cannot therefore, be said that the notice of no confidence motion did not contain reasons. The fact that date was not mentioned in the notice cannot invalidate the notice. This contention that the date was not mentioned in the original notice was raised for the first time and was not established. In any event, it is the date of receipt of such notice by the Panchayat which is material, and that date is clearly borne out as "14.7.1997" as stated in the impugned order. The President failed to call the meeting and therefore, the Secretary of the Panchayat made a report to the competent Authority and thereafter, the meeting came to be called on 27.8.1997, when the impugned resolution of removing the petitioner was passed.

4. It was then contended by the learned Counsel for the petitioner that the meeting of the Panchayat was not called by the competent Authority - namely, the District Development Officer, but was called by the Taluka Development Officer, who was a Secretary of the Panchayat. It was also contended that it was incumbent upon the District Development Officer to preside over the meeting.

This contention has also been raised for the first time. The District Development Officer is the competent Authority under Section 70(4)(b) as per item 16 of the Schedule to the Notification regarding the allocation of powers issued by the Government on 26.7.1994. The record clearly shows that the Secretary had referred the matter to the competent Authority i.e. the District Development Officer and the District Development Officer had, by his communication dated 16.8.1997, directed the meeting to be called on 27.8.1997 at 12.00 noon, if the President fail to call the meeting. Therefore, the meeting came to be called only by virtue of this direction issued by the competent Authority i.e. the District Development Officer, where the date and time were clearly fixed by the competent Authority for the said meeting. Only the organisational aspect was left to the Taluka Development Officer, who was also the Secretary of the Panchayat. It cannot therefore, be said that the meeting was not legally convened. It was not necessary for the competent Authority to preside over the meeting. Section 70(4) of the Act does not require the competent Authority to preside over the meeting. It only requires him to call a meeting of the Panchayat, if the contingency envisaged under Section 70(4)(b) arises. Thus, the meeting was validly convened and there is no violation of the provisions of Section 70 of the Act.

5. It was then contended that under Rule 22 of the said Procedure Rules, resolutions must be passed by ballot, while in the present case the impugned resolution of removal of the petitioner was passed by show of hands.

Thirtyone, out of thirtyfour members had signed the notice of no confidence motion. All these 31 members have remained present on 27.8.97 at 12.00 noon in a meeting presided over by the Vice-President and all of them voted in favour of the no confidence motion by raising their hands. Remaining 3 members remained absent. Under Rule 21, when the Panchayat takes a

decision on the motion of no confidence, the Secretary is required to communicate to the concerned officer the names of all members who were present at the meeting at which the decision was taken and the nature of vote given by each members by show of hands, whether in favour or against the motion. Thus, passing of a resolution while considering the motion of removal of such office bearer by show of hands, is clearly contemplated by the Rules. The resolution was validly passed and as per Section 70(2), in view of said motion which was carried by over-whelming majority, the petitioner would cease to hold office, three days after the date on which the motion was carried.

Under these circumstances, there is absolutely no merit in this petition and it is summarily rejected.

6. At this stage, the learned Counsel for the petitioner points out that the petitioner was protected by the State Government till the evening of 29th September, 1997 and therefore, he should be allowed to continue as President.

The statutory effect of Section 70(2) must follow unreservedly when it is clearly established that the petitioner has been validly removed by a no confidence motion, which is passed in accordance with law. The petitioner therefore, cannot be allowed to continue in the office, in the face of this finding. The request is therefore, rejected.

*/Mohandas